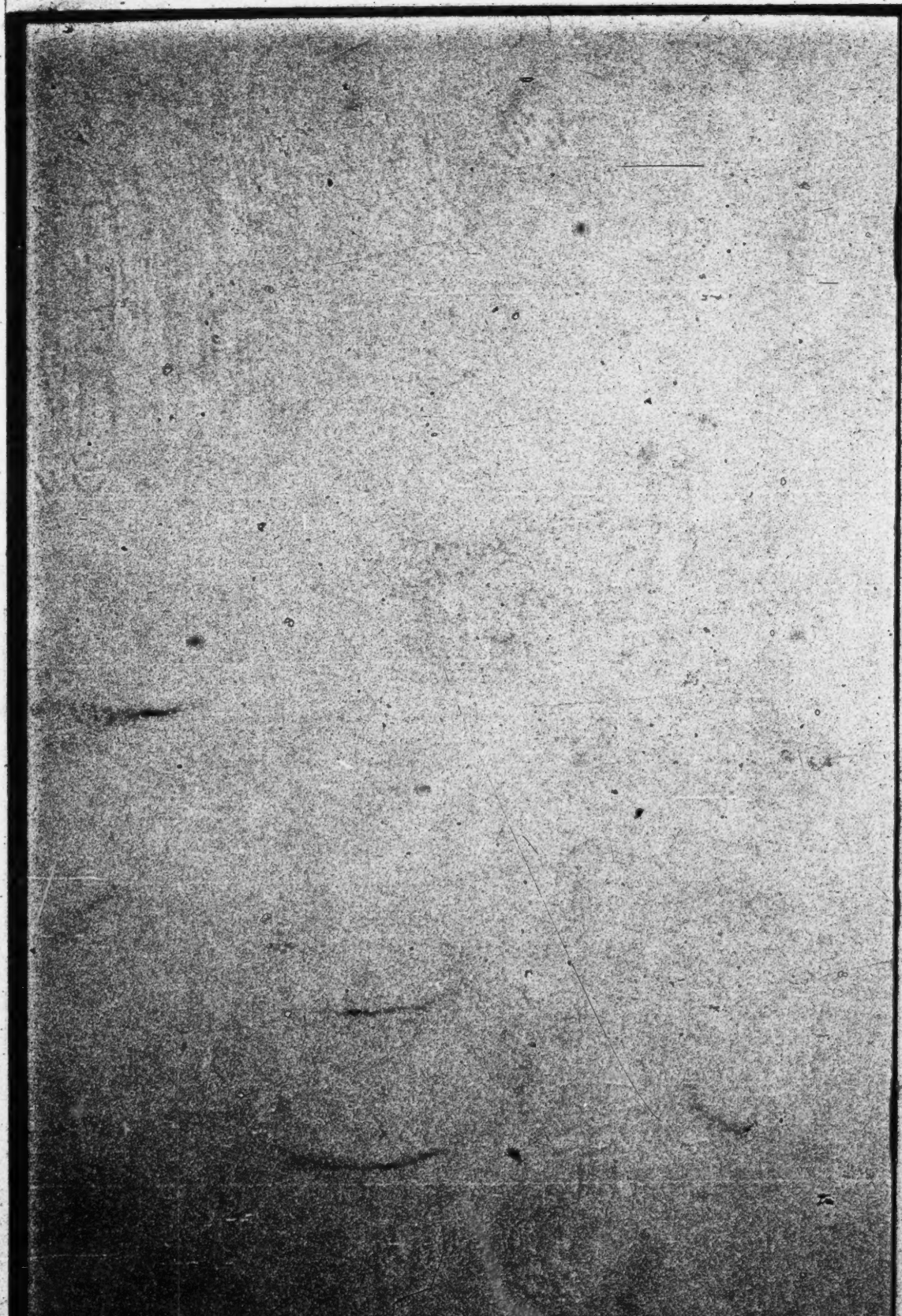


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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 306

THE ASSOCIATED PRESS, *Petitioner,*

—against—

EDWIN A. WALKER, *Respondent.*

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

WILLIAM P. ROGERS
LEO P. LARKIN, JR.
STANLEY GODOFSKY
GUY C. QUINLAN
200 Park Avenue
New York, New York 10017

ARTHUR MOYNIHAN
50 Rockefeller Plaza
New York, New York

EARL T. THOMAS
Lamar Life Building
Jackson, Mississippi

JOHN T. GUYTON
BILLY R. PESNELL
867 Texas Eastern Building
Shreveport, Louisiana
Attorneys for Petitioner
The Associated Press

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The Associated Press, *Petitioner,* —against— Edwin A. Walker, *Respondent*	No. 306

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General Walker's Response to the Petition for a Writ of Certiorari establishes conclusively Petitioner's position that certiorari should be granted and the judgment below summarily reversed.

Respondent points to no essential differences between the records in the Louisiana and Texas cases. To the contrary, Respondent concedes once again that, with certain limited exceptions hereafter discussed:

> "the parties, the subject matter and the evidence, as far as Associated Press are concerned, are identical with the Associated Press v. Walker (Oct. Term, 1966, No. 130), referred to by Petitioner as 'the Texas Case' . . ." (Resp. p. 3).

Thus, Respondent's basic position is not that the evidence in this case on the issue of "actual malice" differs in any material respect from such evidence in the Texas case; his position is simply that the decision of this Court in the Texas case was wrong.

General Walker concedes in his Response that the only difference between the records in the Texas and Louisiana cases is that "Associated Press brought to Court in Louisiana the witness, Savell, the President of Associated Press, the Chief of the New Orleans Bureau and various Associated Press newsmen" (Resp. p. 3). While Respondent misrepresents the testimony of these witnesses, it is significant that he makes no attempt to establish how this additional testimony has any bearing on the "actual malice" issue which this Court passed upon in the Texas case.

Respondent does not deny that the keystone upon which the Louisiana Court of Appeal predicated its finding of "actual malice" was repeatedly but unsuccessfully urged in this Court in the Texas case. Instead, he asserts that a "keystone more solid, fair and logical would be difficult to comprehend" (Resp. p. 11)—in short, that this Court's decision in the Texas case was wrong.

General Walker asserts that "no constructive purpose would be accomplished by a re-trial of this lawsuit" (Resp. p. 20). We agree. The fundamental issue of "actual malice" was thoroughly argued before this Court in the Texas case and decided unanimously in Petitioner's favor on June 12, 1967. On Respondent's own concessions, that decision must be controlling here.

Respondent's suggestion (Resp. pp. 18-19) that Petitioner failed to object to "the prejudicial conduct of the trial below" is untrue. Petitioner repeatedly made timely objections to such conduct (*see, e.g.*, R. 1126-1128, 1712, 1745, 1777, 1788-1790, and 2511-2512). Moreover, Petitioner moved for a mistrial immediately after the demonstration which followed the inflammatory summation to the jury by Respondent's counsel (R. 2754).

For all of the reasons set forth herein and in the Petition for a Writ of Certiorari, we respectfully request that certiorari be granted and the judgment below summarily reversed.

Respectfully submitted,

WILLIAM P. ROGERS
LEO P. LARKIN, JR.
STANLEY GODOFSKY
GUY C. QUINLAN
200 Park Avenue
New York, New York 10017

ARTHUR MOYNIHAN
50 Rockefeller Plaza
New York, New York

EARL T. THOMAS
Lamar Life Building
Jackson, Mississippi

JOHN T. GUYTON
BILLY R. PESNELL
867 Texas Eastern Building
Shreveport, Louisiana
Attorneys for Petitioner
The Associated Press